

APPEAL NO. 041222
FILED JULY 12, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 19, 2004. The hearing officer determined that Dr. A was properly appointed as the designated doctor. He also determined that appellant (claimant) reached maximum medical improvement (MMI) on June 18, 2003, with an impairment rating of four percent, in accordance with the report of the Texas Workers' Compensation Commission (Commission)-selected designated doctor. Claimant appealed these determinations on sufficiency grounds. Claimant also contends that the designated doctor was not properly selected and that Commission Advisory 2004-03, signed April 19, 2004, is contrary to the 1989 Act and rules and violates the Administrative Procedures Act (APA). She also contends that her substantive due process rights have been violated by application of the advisory. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that Advisory 2004-03 is contrary to the 1989 Act and rules, that the Commission exceeded its authority in issuing the advisory, and that the advisory violates APA requirements regarding rulemaking. Whether the Commission exceeded its authority in issuing Advisory 2004-03 and whether it is contrary to the 1989 Act and rules are matters for the courts. See Texas Workers' Compensation Commission Appeal No. 031441, decided July 23, 2003. Regarding claimants due process argument, the Appeals Panel has no jurisdiction to deal with constitutional issues. Texas Workers' Compensation Commission Appeal No. 031132, decided June 18, 2003.

Claimant contends that the designated doctor improperly refused to change her MMI date after she had surgery. The designated doctor was asked whether his report would change after the surgery and he said that it would not. We perceive no reversible error in this case. See Texas Workers' Compensation Commission Appeal No. 980091, decided March 3, 1998. Claimant contends the designated doctor was not properly selected in this case. The designated doctor is a medical doctor, as is claimant's surgeon. The hearing officer did not err in determining that the designated doctor was properly selected in this case. See Texas Workers' Compensation Commission Appeal No. 040633-s, decided May 7, 2004 (where we retreated from Texas Workers' Compensation Commission Appeal No. 030737-s, decided May 14, 2003, based upon Advisory 2004-03).

We have reviewed the complained-of determinations and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the

record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge